D.B. CIVIL SPECIAL APPEAL(W)NO.358/2007

Kamal Singh Verma

Vs.

State of Rajasthan and Ors.

Date of Order :: 14-11-2007

HON'BLE THE ACTING CHIEF JUSTICE MR. RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. B.L. Maheshwari, for the appellant.
Mr. L.R. Upadhyaya, Deputy Govt. Advocate.

Heard learned counsel for the parties.

This appeal is directed against the judgment of the learned Single Judge dated 12.2.2007.

The petitioner-appellant's vehicle was found carrying 46 passengers at route Kankroli-Udaipur on 4.9.2004 about which he had no valid permit. Otherwise it was registered as a stage carriage permit under a permit to ply on Nathdwara Kankroli route.

Action was taken by the authorities of the Motor Vehicles Act for plying vehicle on route in violation of Section 66 and 192-A of the Motor Vehicles Act, 1988 (for short 'the Act of 1988' hereinafter). Plying the vehicle without licence by

the Government on any route is an offence which is compoundable under the provisions of the Act of 1988 and same was compounded by the petitioner. According to his averments, however under the Rajasthan Motor Vehicles Taxation Act, 1951 (for short 'the Act of 1951' hereinafter) the authorities thereunder issued a demand of tax by considering that since he has not paid tax at rate prescribed for use of goods vehicle as contract carriage. Demand was raised for one month's road tax on the vehicle as contract carriage at the rate prescribed for the State.

The petitioner has challenged the assessment and demand of tax under Motor Vehicles Taxation Act alleging that since for contravention of provisions of the Act of 1988 consequence has been provided under that Act, no action can be taken under the Act of 1951.

The learned Single Judge had vacated the interim order granted while admitting the writ petition inter alia on the ground that since remedy of appeal is available to the petitioner-appellant against Annexure-4, the interim stay order cannot be continued.

While issuing notice of this appeal against the aforesaid order dated 12.2.2007, learned

counsel for the petitioner -appellant urged that since the appellant has challenged the demand on the ground of inherent lack of jurisdiction in the assessing authority, for the reason stated aforesaid the existence of alternative remedy cannot be held against him. Before us also same contention has been raised by relying upon the decision of the Supreme Court in 2004(1) SRJ P.90 (M.P.A.T.T. Permit Owners v/s State of M.P.).

Having considered the contentions raised by the learned counsel for the appellant, we are of the opinion that it is not a case of inherent lack of jurisdiction as urged by him.

The Motor Vehicles Act, 1988 has been enacted on repeal of Motor Vehicles Act, 1939 and the Rajasthan Motor Vehicles Taxation Act, 1951 are two statutes enacted by two different legislatures governed by exclusive field assigned to them. Motor Vehicles Taxation Act, 1951 is enacted by State legislation on the field reserved for it under list 2 of VII schedule of the Constitution authorising levy of tax for use of roads by vehicles as a compensatory tax. The Motor Vehicles Act, 1988 on the other hand has been enacted by parliament in exercise of powers conferred upon it under list 'I' of VII schedule for regulating the road transport and development of roads. Thus, the two Acts operate

on different fields.

The levy of tax, its collection and incidental matters are governed by the Act of 1951, whereas the impugned order of taxation demand has been made in exercise of power conferred under the Act of 1951 for levying of road tax and demand of tax on the vehicle as contract carriage is not as a consequence of an offence committed under the Motor Vehicles Act but is as a result of user of the vehicle as particular class of vehicle for use of roads of the State.

The action of the authorities under the Taxation Act is directly related to the user of road by the vehicle in question as contract carriage on a route on which it was not authorised to ply. The effect of use of stage carriage as a contract carriage on different route for which it had permit was disclosed as incident of surprise change. Contravention of provisions of the Act of 1988 but because of user of road in Rajasthan as contract carriage at the rate chargeable under Section 8 of the Act of 1951.

That being the position, we are of the opinion that the petitioner has failed to make out a case of lack of inherent jurisdiction.

In other respects however, since the order under challenge in the writ petition is amenable to alternative remedy, we are in agreement with the learned Single Judge that present was not a fit case for this Court to exercise its extra ordinary jurisdiction dissenting from ordinary rule of not to exercise extra ordinary jurisdiction when equally, efficacious and adequate alternative remedy is available.

However, we are also of the opinion that if despite alternative remedy being available, the case is admitted and kept pended for deciding on merit, rejecting the interim relief in the present material on the availability of alternative remedy is incongruous and cannot be a valid reason. However, since we have not found any substance in the contention relating to lack of inherent jurisdiction and we further opined that it is not a case in which ordinary principle of not entertaining the writ petition where alternative remedy is available should be deviated. As a matter of fact, the writ petition itself ought to have been dismissed rather than kept pended.

Accordingly, while dismissing the special appeal against vacating the interim relief we further dismiss the writ petition also in order to enable the petitioner to avail alternative remedy.

The period taken for prosecuting this appeal as well as writ petition shall be excluded from the period of limitation, if any, for availing alternative remedy by the petitioner and any observation made on merits shall not be held against the petitioner. Merit of the case for tax liability against the petitioner should be considered objectively by the appellate authority.

There shall be no order as to costs.

[BHANWAROO KHAN],J. [RAJESH BALIA],ACTG.CJ.

RM/